

FILED '09 JAN 07 12:30 USDC-ORP

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

SHELDON DEOLIS BROWN,

CV. 08-688-MA

Petitioner,

OPINION AND ORDER

v.

J.E. THOMAS, Warden, FCI
Sheridan,

Respondent.

Sheldon Deolis Brown
Federal Register No. 01174-039
FCI Sheridan
P.O. Box 5000
Sheridan, Oregon 97378-5000

Petitioner, *Pro Se*

Karin J. Immergut
United States Attorney
Suzanne A. Bratis
Assistant United States Attorney
1000 S.W. Third Avenue
Portland, Oregon 97204-2902

Attorneys for Respondent

MARSH, Judge

Petitioner, an inmate at FCI Sheridan, brings this habeas corpus proceeding pursuant to 28 U.S.C. § 2241. For the reasons

set forth below, petitioner's petition for writ of habeas corpus (#1) is denied, and this proceeding is dismissed.

DISCUSSION

On or about January 16, 2007, petitioner was sentenced in the U.S. District Court for the Central District of California to a 57-month term of incarceration. The judgment entered by the court provides that petitioner shall pay restitution in the amount of \$20,181. The judgment further provides that restitution "shall be due during the period of imprisonment, at the rate of not less than \$25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program."

Petitioner alleges that he "has just been notified by the respondent that the BOP intends to substantially increase his restitution payment and has threatened to place the petitioner into IFRP Refusal Status if he should refuse" to participate in the IFRP. Petitioner contends that respondent's collection of restitution payments in excess of that provided by his judgment is unlawful under United States v. Gunning, 401 F.3d 1145 (9th Cir. 2005).

In response, respondent advises the court that "the BOP has limited petitioner's IFRP obligation to \$25 per quarter." Based upon this representation, petitioner's petition for writ of habeas corpus is DENIED AS MOOT. See also United States v. Lemoine, 546 F.3d 1042 (9th Cir. 2008) (concluding that BOP may impose a

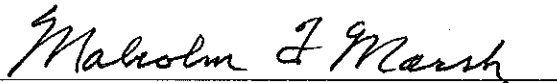
restitution payment schedule at a higher or faster rate than specified in a judgment if the inmate voluntarily agrees to a different restitution payment schedule under the IFRP).

CONCLUSION

Based on the foregoing, petitioner's petition for writ of habeas corpus (#1) is DENIED as MOOT. Petitioner's request for the appointment of counsel (contained in his petition) is DENIED.

IT IS SO ORDERED.

DATED this 7 day of January, 2009.


Malcolm F. Marsh
United States District Judge